

**STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III**

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

**Appellate Case Nos. 15 AP 1571 CR & 15 AP 1572 CR
Trial Court Case Nos. 14 CT 885 & 14 CM 1250**

STATE OF WISCONSIN,

Plaintiff-Respondent,

-vs-

THOMAS M. ORT,

Defendant-Appellant.

REPLY BRIEF OF DEFENDANT-APPELLANT

**Appealed from a Judgment of Conviction Entered
In the Circuit Court for Outagamie County
The Honorable Nancy J. Krueger Presiding**

Respectfully Submitted:

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ARGUMENT

LAW ENFORCEMENT LACKED REASONABLE SUSPICION OR PROBABLE CAUSE TO SEIZE MR. ORT.

In the present case, the State argues that Officer Charles Vosters had reasonable suspicion to stop the silver truck that stopped near his vehicle. *See* (State's br. at 3.)(arguing the officer had reasonable suspicion to stop that vehicle for Reckless Driving, Following Too Closely and "impaired driving.")

Again, Officer Vosters was stopped at a red light when a vehicle traveling in the opposite direction stopped in the middle of the road alongside his vehicle. (R17 at 3-4.) Officer Vosters recognized the driver of this vehicle as the ex-police-chief's son, Michael Campbell. (R17 at 4.) Campbell reported that he was being followed by a guy "in a silver truck [who] was swerving and tailgating me." *Id.* While Officer Vosters was speaking

with Campbell, a “silver truck” came around the corner – and stopped alongside the two other stopped vehicles. *Id.*

Soon after stopping, the truck left. (R17 at 5.)

Officer Vosters, however, did not attempt to stop that truck. Rather, Officer Vosters made a U-turn and lost sight of the truck for “ten seconds”. (R17 at 5.)

This point cannot be understated. Officer Vosters was “15 feet [to] 20 feet” from a truck, made a U-turn and then had no idea where the truck was. *See* (R17 at 4.)

Officer Vosters only made new visual contact with a truck upon driving down the street and finding Campbell who was pointing down Main Avenue at a speeding truck. (R17 at 6.) At that point in time Officer Vosters testified, in part:

Q: Do you remember what traffic was like at that time?

A: At that time there was nobody else on Main Avenue, and it was Michael on 2nd and Main that pointed me where it was. There was no car between me and the suspect vehicle.

(R17 at 7.)

Officer Vosters then followed that truck, but again, did not attempt to stop it. Rather, Officer Vosters lost sight of this truck. (R17 at 7.) Importantly, Officer Vosters did not testify that there was no other traffic when he was trying to find the truck after losing sight a second time.

Again, Mr. Ort's vehicle was a generic, standard pickup truck. (R17 at 21.) There are literally hundreds of such vehicles on Wisconsin's highways. *Id.*

Thus, the officer's action in stopping the first silver truck he saw after losing sight of the offending car a second time amounted to nothing more than a hunch prohibited by *Terry*.

Rather, Officer Vosters could have pulled up to the vehicle to speak to the driver before activating his emergency lights and detaining the driver.

CONCLUSION

WHEREFOR, Mr. Ort respectfully requests this Court to reverse his convictions based on the circuit court's failure to suppress evidence.

Dated this ____ day of February, 2016.

Respectfully submitted,
LUBAR & LANNING, LLC

By: _____
Chad A. Lanning
State Bar No. 1027573
Attorneys for Defendant-Appellant

CERTIFICATION

I hereby certify that this brief meets the form and length requirements of Rule 809.64(4) in that it is proportional serif font. The text is 13 point type and the length of the brief is 839 words.

I hereby certify that filed with this brief, either as a separate document, is an appendix that complies with s. 809.62(2)(f) & 809.19(2) and that contains:

- (1) a table of contents;
- (2) the findings or opinion of the trial court; and
- (3) the portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

I further certify that the electronically filed brief is identical in both content and format as the paper copy.

Dated this 8th day of February, 2016.

Respectfully submitted:

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